

1 E. MARTIN ESTRADA  
2 United States Attorney  
3 CAMERON L. SCHROEDER  
4 Assistant United States Attorney  
5 Chief, National Security Division  
6 SOLOMON KIM (Cal. Bar No. 311466)  
7 KATHRYNNE N. SEIDEN (Cal. Bar No. 310902)  
8 Assistant United States Attorneys  
9 Terrorism and Export Crimes Section  
10 1500 United States Courthouse  
11 312 North Spring Street  
12 Los Angeles, California 90012  
13 Telephone: (213) 894-2450/0631  
14 Facsimile: (213) 894-0140  
15 E-mail: solomon.kim@usdoj.gov  
16 kathrynne.seiden@usdoj.gov

17 Attorneys for Plaintiff  
18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 No. CR 18-759(A)-CJC

23 Plaintiff,

24 v.  
GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S EX PARTE APPLICATION  
TO MODIFY PRETRIAL SCHEDULE

25 ROBERT RUNDO et al.,

26 Defendants.

27 Plaintiff United States of America, by and through its counsel  
28 of record, the United States Attorney for the Central District of  
California and Assistant United States Attorneys Solomon Kim and  
Kathrynne N. Seiden, hereby files its Opposition to Defendant's Ex  
Parte Application to Modify Pretrial Schedule (Dkt. 257).  
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This opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

DATED: September 13, 2023

E. MARTIN ESTRADA  
United States Attorney

CAMERON L. SCHROEDER  
Assistant United States Attorney  
Chief, National Security Division

/s/  
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SOLOMON KIM  
KATHRYNNE N. SEIDEN  
Assistant United States Attorneys

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   Counsel have represented defendant Robert Rundo ("Rundo") in  
3 this case for the past five years and have been on notice of the  
4 current briefing schedule for over seven months. Now, three and a  
5 half weeks before their deadline to file pretrial motions, counsel  
6 seek additional time to prepare them. Counsel's proposed method of  
7 accomplishing this is not to request a trial continuance, but to ask  
8 the Court to slash the government's time to respond to three separate  
9 defendants' pretrial motions -- including motions to dismiss, motions  
10 to suppress, and motions in limine -- from three weeks to just nine  
11 days. The government does not oppose modifying the briefing schedule  
12 with respect to motions in limine, but respectfully submits that nine  
13 days is insufficient to adequately respond to case dispositive  
14 motions filed on behalf of three separate defendants in a way that  
15 could meaningfully assist the Court in ruling on those motions.

16                  Moreover, defense counsel's justification for the requested  
17 modification stems from a conflict that affects only one of the two  
18 DFPDs assigned to the case and which arises from her own making. If  
19 defense counsel feel that they need more time to adequately prepare  
20 for trial, they can and should seek a continuance of the existing  
21 trial date, rather than force the Court to rule on case dispositive  
22 motions that have not received adequate time for briefing. The  
23 government therefore respectfully requests that the Court grant the  
24 modification with respect to motions in limine, but deny the request  
25 with respect to any motions to dismiss or motions to suppress.

26                  **I. BACKGROUND**

27                  DFPD Deixler has represented defendant since October 2018, when  
28 he made his initial appearance in this case. (Dkt. 12.) Although

1 the Court dismissed the indictment in June 2019, the Ninth Circuit  
2 reversed and remanded two and a half years ago, in March 2021. (Dkt.  
3 145). The Ninth Circuit's mandate issued in February 2022, at which  
4 point the Court reopened the case. (Dkts. 161-62.) Eight months  
5 ago, in January 2023, defendants were charged by superseding  
6 indictment for the same conduct underlying the 2018 indictment.  
7 (Dkt. 209.) In February, the Court continued the trial date to  
8 December 12, 2023 and set a briefing schedule that gave the parties  
9 until October 5, 2023 to file pretrial motions. (Dkt. 219.) The  
10 Court allocated three weeks for the parties to respond to pretrial  
11 motions, setting the deadline to October 26, 2023. (Id.) The Court  
12 also set a motion hearing date for November 16, 2023. (Id.)

13 Defendant was arrested and appeared on the superseding  
14 indictment on August 2, 2023. (Dkt. 251.) On August 16, 2023,  
15 roughly four months before the current trial date and seven weeks  
16 before the deadline for pretrial motions, DFPD Deixler notified the  
17 Court and the parties that defendant did not wish to continue trial  
18 and would be proceeding as scheduled. Nearly two weeks after  
19 defendant's initial appearance, on August 17, 2023, DFPD Murphy  
20 joined DFPD Deixler as counsel of record for defendant. (Dkt. 256.)

21 Now, a month after counsel provided notice that they would be  
22 proceeding on the current trial date, they request that the Court  
23 extend the deadline to file pretrial motions by nearly two weeks, to  
24 October 17, 2023, giving defense counsel five weeks from now -- or  
25 nine weeks in total from the time they knew they would be proceeding  
26 on the current trial date -- to prepare and file their motions.  
27 Defense counsel further request that the Court cut the government's  
28 time to respond to pretrial motions from 21 days to just nine. In

1 other words, counsel suggest that the Court simply reallocate to them  
2 two weeks from the government's time to respond. Counsel also  
3 propose moving the motions hearing to the week of Thanksgiving,  
4 thereby leaving three weeks over a holiday between a decision on any  
5 potential dispositive motion filed by defendants and the actual trial  
6 date.

7 **II. THE COURT SHOULD DENY DEFENDANT'S APPLICATION**

8 The Court should deny the ex parte application or, in the  
9 alternative, grant it only with respect to motions in limine. There  
10 is no good cause to modify the pretrial briefing schedule. Doing so  
11 will hinder the government from providing adequate briefing to the  
12 Court on potentially case-dispositive motions and result in a  
13 significant waste of resources.

14 The parties previously proposed, and the Court granted, a  
15 briefing schedule which accounts for the time necessary to allow the  
16 parties time to respond to substantive pretrial motions, such as  
17 motions to suppress or motions to dismiss on complex constitutional  
18 grounds. Under counsel's proposed modification, the government will  
19 have nine days to respond not only to motions in limine from three  
20 defendants, but also to motions to dismiss, motions to suppress, or  
21 motions challenging Rundo's extradition, all of which counsel  
22 suggests she may file.<sup>1</sup> (See Dkt. 257 ¶ 11.) Nine days is simply  
23 not sufficient to respond meaningfully to that volume of substantive  
24 motions. Nor is three weeks over a holiday sufficient time between a  
25 case dispositive hearing and trial to subpoena and prepare witnesses

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27                   1 Counsel for another defendant has also notified the government  
28 that he intends to file several pretrial motions, including a motion  
   to dismiss.

1 -- some who will be traveling from out-of-district to testify about  
2 conduct which occurred in 2018 -- and to otherwise prepare for trial.  
3 Accordingly, the government will be forced to substantially prepare  
4 for a trial in advance of a potentially case-dispositive ruling,  
5 potentially resulting in a significant waste of resources.

6 Moreover, the sole basis for DFPD Murphy's request is that her  
7 colleague, who has represented defendant for the past five years, is  
8 currently unable to assist in this case, including in the filing of  
9 pretrial motions, because she is preparing for an upcoming trial in  
10 another case, United States v. Boylan, No. 22-482-GW, which is set  
11 for October 24, 2023. Boylan is represented by at least three highly  
12 experienced DFDPs, including DFPD Deixler. (See Boylan, Dkt. 62 at  
13 8.) The DFPDs have requested six continuances of the trial date in  
14 that matter. (Id. at 3.) In an ex parte application to continue the  
15 trial date filed in May 2023, the DFPDs requested that the trial in  
16 Boylan be continued to September 26, 2023, representing that the  
17 trial would last two to three weeks (i.e., through October 10, 2023).  
18 (See Boylan, Dkt. 51.) At the time of the application, the current  
19 pretrial briefing schedule in this matter had already been set by the  
20 Court. (See Dkt. 220.) DFPD Deixler nonetheless requested a trial  
21 date of September 26, 2023 in Boylan, knowing that she would be in  
22 the middle of a two-to-three-week trial in Boylan while motions were  
23 simultaneously due in this case. In fact, DFPD Deixler specifically  
24 referenced the upcoming trial in this case as one of the bases for  
25 the ex parte request to continue the trial in Boylan. (Boylan, Dkt.  
26 51 at 3-4.)

27 In short, the government does not wish to unreasonably burden  
28 defense counsel with respect to the preparation of pretrial motions

1 and has offered to continue the trial date so that counsel have more  
2 time to file their motions. But a conflict which defense counsel not  
3 only knew about, but arguably created, and which applies only to one  
4 of defendant's two attorneys, does not constitute good cause to cut  
5 the government's time to respond to motions in half. That is  
6 particularly so given that it is defendant who insists on proceeding  
7 to trial on the current date.

8 **III. CONCLUSION**

9 For the foregoing reasons, the government respectfully requests  
10 that the Court deny defendant's ex parte application to amend its  
11 previous order or, in the alternative, grant defendant's application  
12 with respect to motions in limine, only.

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